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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,576	08/04/2000	Larry W. Blake	TEKIA.002A	1860

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EXAMINER

BLANCO, JAVIER G

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/631,576

Applicant(s)

BLAKE, LARRY W.

Examiner

Javier G. Blanco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40, 51-72, 74, 75 and 77-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40, 51-53, 56-61, 67-69, 74, 75, and 77-81 is/are rejected.
- 7) ☒ Claim(s) 54, 55, 62-66 and 70-72 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 9, 2004 has been entered.

Claim Objections

2. Claims 55, 56, and 63 are objected to because of the following informalities:
- a. Regarding claim 55, please add --rigid-- in front of "element" (see line 2). Appropriate correction is required.
 - b. Regarding claim 56, please add --polyphenylsulfone (PPSU)-- as part of the Markush group (claim 58 is reciting polyphenylsulfone (PPSU) as one of the high modulus materials). Appropriate correction is required.
 - c. Regarding claim 63, please substitute "psi" (see line 2) with --psi/inch-- (see, for example, claim 60, line 2). Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 40, 51-53, 56, 67-69, 74, 75, and 79-81 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Benjamin (FR 2,728,459).

As seen in Figures 3, 4, and 8-15, Benjamin discloses a two-part IOL comprising an optic (Figures 8-11: lens 37; Figures 12-15: lens 43) made of silicone (see page 9) and a haptic(s) (double ring 28) made of PMMA (see page 9).

With specific reference to Figures 8-11, Benjamin teaches at least two cleats (bridges 31) on the haptic (double ring 28) extending generally in the plane of the haptic, and at least two eyelets (peripheral holding device 53 having a median slit 38) on the optic (lens 37) allowing each of said cleats to firmly attach to one of said eyelets on the optic (see pages 6-8), wherein said two-part IOL is configured to pass completely through a small opening without folding the haptic (see page 6 for explanation of how double ring 28 is inserted by rotation by inserting first chamfered edge 17 of narrow oblique opening 15).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 77 and 78 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Benjamin (FR 2,728,459).

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As seen in Figures 3, 4, and 8-15, Benjamin discloses a two-part IOL comprising an optic (Figures 8-11: lens 37; Figures 12-15: lens 43) made of silicone (see page 9) and a haptic(s) (double ring 28) made of PMMA (see page 9).

With specific reference to Figures 12-15, Benjamin teaches at least two cleats on the optic (lens 43), at least two eyelets (keyhole openings 24) on the haptic (double ring 28) allowing the cleats to firmly attach to the eyelets (see pages 7 and 8), wherein said two-part IOL is configured to pass completely through a small opening without folding the haptic (see page 6 for explanation of how double ring 28 is inserted by rotation by inserting first chamfered edge 17 of narrow oblique opening 15). Two possible interpretations of what the Examiner considers as the cleats in the optic:

First interpretation (102(b)): The external area 44 + projection 45 + stem 46 comprises a cleat assembly. As seen in Figures 14 and 15, said assembly extends generally in the plane of the optic.

Second interpretation (103(a)): Projection 45 + stem 46 comprises a cleat. With this interpretation, said cleats extend perpendicular to the plane of the optic. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the cleat generally in the plane of the optic because Applicant has not disclosed that extending the cleat generally in the plane of the optic provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the cleat extending in other positions as long as it will firmly attach to the corresponding eyelet. Also, the incision required for insertion would still be minimal.

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7. Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin (FR 2,728,459).

Benjamin teaches the claimed invention except for particularly disclosing KAPTON or polyphenylsulfone (PPSU) as the haptic material. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have used said materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability of the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benjamin (FR 2,728,459).

Benjamin teaches the claimed invention except for particularly disclosing the modulus ranges set forth in claims 59-61. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the haptic with a particular modulus (e.g., 100,000 to about 500,000 psi/inch) since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

9. Applicant's arguments with respect to claims 40 and 77-79 have been considered but they are not persuasive.

a. With regards to the arguments to rejection under 102(b), Figures 8-11 (disclosed/described in pages 6-8) teach bridges 31 (= cleats) on the double ring 28 (= haptic) extending generally in the

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plane of the haptic (when the optic is attached to the haptic, said plane of the haptic is generally perpendicular to the optical axis). Lens 37 (= optic) comprises peripheral holding devices 53 having median slits 38 (= eyelets) allowing each of said cleats to firmly attach to one of said eyelets on the optic.

b. With regards to the arguments to rejection under 35 U.S.C. 102(b) or, in the alternative, under 35 U.S.C. 103(a), Examiner respectfully submits the response to the arguments were adequately addressed in the 102(b)/103(a) rejection above.

Allowable Subject Matter

10. Claims 54, 55, 62-66, and 70-72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Bissonette (US 4,725,276), Lindstrom (US 4,781,718), Werblin (US 5,222,981), and Lecoq (FR 2,770,394).

12. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114.

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See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

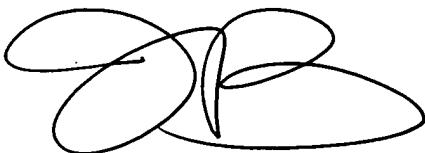
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB



September 15, 2004



David H. Willse
Primary Examiner